

REMARKS

Status of the Claims

Claims 20-38 are currently pending in the application. Claims 20, 28, 32, 33 and 36-38 stand rejected. The Examiner objects to claims 21-27, 29-31, 34 and 35. Claims 20, 28, 33, 34 and 36-38 have been amended as set forth herein without prejudice or disclaimer. No new matter has been added by way of the present amendments. Specifically, the amendments to claims 20 and 36 are to correct graphical errors in the formulas depicted therein. More specifically, the claims are directed to oxirane structures but the formulas appeared to depict a carbon atom, not an oxygen atom, in the oxirane ring due to a malfunction of graphical software used to draft the chemical structures. Therefore, the faulty structures have been replaced herein with structures which are consistent both with the language of the claims and the specification at, for instance, pages 1, 3 and 6. Further, claims 28, 33 and 34 were amended to recite the chemical names corresponding to the acronyms recited therein, such as DABCO, DBU, THF and NMP. These amendments are supported generally by the knowledge of one of skill in the art of organic synthetic chemistry. Additionally, claim 36 has been amended to recite the proper structure of formula IV and to recite the definitions of variables A, B and L as provided in claim 20. Reconsideration is respectfully requested.

Rejections Under 35 U.S.C. § 103(a)

Claims 36-38 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable as obvious over Janssen et al., U.S. Patent No. 4,652,580 (hereinafter, "Janssen et al.") and Karbach et al., U.S. Patent No. 4,906,652

(hereinafter, "Karbach et al."). (*See*, Office Action of August 8, 2007, at pages 2-4, hereinafter, "Office Action"). Applicants traverse the rejection as hereinafter set forth.

The Examiner states that the cited references disclose compounds of formula (I) as depicted on page 3 of the Office Action, which is a species that allegedly anticipates the presently claimed genus encompassed by claims 36-38. (*Id.* at page 3). The Examiner further states that Janssen et al. disclose hydrohalic acids that can be used to make chloride and bromide salts, as well as sulfuric and sulfonic acids which can be used to make tosylate and mesylate salts. (*Id.*). The Examiner concludes that since the cited references disclose a species of the presently claimed genus of structures and various salts encompassed by the claims, the compound 4-amino-1,2,4-triazolium salt of formula (IV) of the presently claimed invention is anticipated and/or obvious in light of the cited references. (*Id.*).

Applicants note that claims 20-35 are not indicated as being anticipated by, or obvious in light of, the cited references. Applicants further note that in fact, claim 36 recited an incorrect structure. That is, although claim 36 recited the term "formula IV," the chemical formula depicted following this term was not formula IV as disclosed in the specification. Thus, claim 36 has been amended herein without prejudice or disclaimer to correct this typographical error. Additionally, claim 36 has been amended to more properly recite the definitions of A, B and L, as recited in process claim 20. This amendment is supported by claim 20.

Thus, Applicants believe that with this correction of the formula structure in claim 36, claim 36 is likewise not anticipated by, or obvious in light of, the cited references for the same reason that claim 20 is also not anticipated by, or obvious in light of, the cited references. That is, the chemical structure of the compound recited in claim 36 is novel and non-obvious since

none of the cited references disclose or suggest a compound having the recited chemical structure. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (*See, Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Reconsideration and withdrawal of the anticipation, or obviousness rejection of claims 36-38 are respectfully requested.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 20, 28, 32, 33 and 36-38 rejected under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. (*See*, Office Action, at page 4). Applicants traverse the rejection as set forth herein.

The Examiner states that claim 20 is indefinite for reciting two compounds of formula (II) and for missing a compound of formula (III). Although Applicants do not agree that claim 20 is indefinite, to expedite prosecution, claim 20 has been amended herein to properly identify the chemical structure depicted after the term "formula III" as in fact being formula "III." Furthermore, as mentioned above, Applicants have amended claim 20 without prejudice or disclaimer to more clearly and more properly recite the correct chemical structure of the oxirane rings in the chemical formula recited. Support for these amendments may be found throughout the specification at, for instance, pages 1-5.

The Examiner further requests Applicants to define the acronyms DABCO, DBU, THF and NMP in claims 28, 32 and 33. Applicants have complied and have amended claims 28, 32 and 33 without prejudice or disclaimer to recite the commonly-known chemical names of the acronyms DABCO, DBU, THF and NMP. Support for this amendment may be found throughout the literature available to one of skill in the art at the time the present application was filed. For instance, as evidenced by the publication by Beyer, Walter, "*Lehrbuch der Organischen Chemie*," S. Hirzel Verlag Stuttgart, Leipzig, 1998, which is a general scientific text on organic chemistry. (See, copy of pages 97, 770, 841 and 859, attached hereto for the Examiner's consideration, providing the complete chemical names for the acronyms recited in claims 28, 33 and 34).

The Examiner believes that claims 36-38 are indefinite because they improperly depend from claim 1, since claim 1 is cancelled, and further that claim 36 would not either properly depend from claim 20 since claim 20 is a process claim and claim 36 is a product claim. (*Id.*). Although Applicants do not agree that claim 36 is indefinite, to expedite prosecution, claim 36 has been amended herein without prejudice or disclaimer, as discussed above, to be independent and to define the variables A, B and L as defined in independent process claim 20. Further, claims 37 and 38 have been amended to begin with "The" instead of "A" as the Examiner suggested. (*Id.*).

Reconsideration and withdrawal of the indefiniteness rejection of claims 20, 28, 32, 33 and 36-38 are respectfully requested.

Objections to the Claims

The Examiner objects to claims 21-27, 29-31, 34 and 35. (*See*, Office Action, at page 5). The Examiner states that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims from which they depend. (*Id.*). However, Applicants believe that the amendments provided hereinabove to claims 20, 28, 33, 34 and 36-38 place all pending claims in condition for allowance for the reasons discussed above.

Therefore, reconsideration and withdrawal of the objection to claims 21-27, 29-31, 34 and 35 are respectfully requested.

CONCLUSION

If the Examiner has any questions or comments, please contact Thomas J. Siepmann, Ph.D., Registration No 57,374, at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: November 8, 2007

Respectfully submitted,

By 

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Attachments: Copy of Beyer, Walter, "*Lehrbuch der Organischen Chemie*," S. Hirzel Verlag
Stuttgart, Leipzig, 1998, pages 97, 770, 841 and 859.

